F. M. Transport, Inc. *and* United Steelworkers of America, AFL–CIO and F. M. Transport Employee Committee, Party in Interest

F. M. Transport, Inc. *and* Edward Connolly *and* Teamsters Local Union No. 124, a/w International Brotherhood of Teamsters, AFL–CIO.[1] Cases 25–CA–17360, 25–CA–17620, and 25–CA–19246

March 24, 1992

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On June 12, 1989, Administrative Law Judge Thomas A. Ricci issued a decision in which he dismissed the complaints. On March 28, 1991,[2] the Board reversed the judge's decision dismissing the complaints, and remanded the proceeding to the judge for a determination on the merits.

On August 15, 1991, the judge issued the attached supplemental decision. The General Counsel filed limited exceptions.[3]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the supplemental decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this decision.[4]

The General Counsel excepted to the judge's failure to conclude that the Respondent violated Section 8(a)(2) by forming, dominating, and assisting the F. M. Transport Employee Committee (the Committee). We find merit in this exception. In his decision, the judge found that, at a time when the Steelworkers Union was organizing the Respondent's employees, the Respondent's president, Fred Miletich, ''gathered all the employees and had them form a committee to deal with and resolve problems . . . in the conditions of employment.'' He also found that Miletich set the number of employees that would be on the committee, and he chose both the management and employee representatives for the committee (although he eventually let the employees choose their own representatives after they objected to his appointment of the employees). Further, the judge found that the Committee thereafter established new work rules, and addressed and resolved workday problems such as disciplinary action against employees and an employee pension plan.

The judge held that the Respondent told the employees to form the Committee in violation of Section 8(a)(2) and (1) of the Act. He failed, however, to proceed to draw the legal conclusion that the Respondent's action amounted to domination of the Committee and interference with its formation in violation of the Act, and he failed to remedy that violation. We conclude that the Respondent dominated the Committee and interfered with its formation in violation of Section 8(a)(2) and (1) of the Act. We shall amend the conclusions of law accordingly, and order the Respondent to cease and desist from dominating, assisting, supporting, or otherwise interfering with the formation or administration of the Committee or any other labor organization of its employees. Further, although the judge noted that the F. M. Transport Employee Committee ceased to exist at the time of these proceedings, we shall order the Respondent to withdraw recognition from and to disestablish the employee committee in the event that it has been reestablished, and to take similar action with respect to any successor committees.

The General Counsel also excepted to the judge's failure to conclude that the Respondent violated Section 8(a)(1) by threatening to close the facility if the employees selected the Union, and by threatening to discharge employees because of their union activity. We find merit in these exceptions. The judge credited the testimony of employees Rinker, Kelley, and Switzer and found that the Respondent's president, Miletich, threatened plant closure and violated Section 8(a)(1). Also, crediting the testimony of employees Switzer and Connolly, the judge found that Miletich threatened to discharge employees because of their union activities in violation of Section 8(a)(1). The judge's findings thus support the formal conclusion that the Respondent violated Section 8(a)(1) by these actions. Accordingly, we will amend the conclusions of law and we shall order the Respondent to cease and desist from engaging in such unfair labor practices.

AMENDED REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order the Respondent to cease and desist and take certain affirmative action designed to effectuate the policies of the Act. It shall offer Robert Wiltse immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position. It shall also make whole Robert Wiltse and Edward Connolly for any loss of pay or benefits they may have suffered by reason of the Respondent's discrimination against them,

[1] The name of this Charging Party has been changed to reflect the new official name of the International Union.

[2] 302 NLRB 241.

[3] On January 21, 1992, the Board denied the Respondent's petition for reconsideration of the Board's denial of the Respondent's request for a fifth extension of time to file cross-exceptions.

[4] We shall modify the judge's reinstatement language to conform to that traditionally used by the Board and shall order the Respondent to remove from its files any reference to the unlawful discharge and suspension of discriminatees Wiltse and Connolly.

with backpay to be computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also remove any references to Wiltse's discharge and Connolly's suspension from its files. *Sterling Sugars*, 261 NLRB 472 (1982). Further, because the violations of the Act committed by the Respondent are widespread and of such an egregious nature that they evidence a general disregard for its employees' statutory rights, we agree with the judge that a broad injunctive order is warranted. *Hickmott Foods*, 242 NLRB 1357 (1979).

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 2.

''2. By the foregoing conduct, and by instructing employees to form a joint committee with management to resolve working conditions of employment, by discussing and resolving working condition problems directly with employees in the committee while a union organizing campaign was in progress, by questioning employees as to whether or not they had signed union cards, by questioning employees as to the reasons why they had signed union cards, by telling employees that the company would obtain better insurance benefits if they abandoned their prounion activity, by telling employees that the employer knows which employees had signed union cards, by promising to improve conditions of employment during an organizational campaign after questioning employees as to their reasons for that activity, by threatening to close the facility if the employees selected the Union, and by threatening to discharge employees because of their union activity, the Respondent has violated and is violating Section 8(a)(1) of the Act.''

2. Substitute the following as Conclusion of Law 3 and renumber the subsequent paragraph.

''3. By dominating, assisting, supporting, and interfering with the formation and administration of the F. M. Transport Employee Committee, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.''

ORDER

The National Labor Relations Board orders that the Respondent, F. M. Transport, Inc., Portage, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in or activities on behalf of United Steelworkers of America, AFL–CIO, or Teamsters Local Union No. 124, a/w International Brotherhood of Teamsters, AFL–CIO, or any other labor organization, by discharging or suspending employees or otherwise discriminating against them in their hire or tenure.

(b) Dominating, assisting, supporting, or otherwise interfering with the formation or administration of F. M. Transport Employee Committee or any other labor organization of its employees.

(c) Recognizing the F. M. Transport Employee Committee, in the event that it has been reestablished, or any successor, as the representative of any of its employees for the purpose of dealing with the Respondent concerning wages, hours, or other terms or conditions of employment.

(d) Instructing employees to form or assist a joint committee with management to resolve working condition problems while a union organizing campaign is in progress.

(e) Discussing and resolving working condition problems directly with employees in the committee while a regular union organizing campaign is in progress.

(f) Questioning employees as to whether or not they had signed union cards.

(g) Questioning employees as to the reasons why they had signed union cards.

(h) Telling the employees the Company would obtain better insurance benefits if they abandoned their prounion activities.

(i) Telling employees that the Employer knows which employees had signed union cards.

(j) Promising to improve conditions of employment during a union organizing campaign after questioning employees as to their economic demands.

(k) Threatening to close the facility if the employees select the Union as their bargaining representative.

(l) Threatening to discharge employees because of their union activity.

(m) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Robert Wiltse immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the amended remedy section of the decision.

(b) Make whole Edward Connolly for any loss of pay or benefits he may have suffered by reason of the Respondent's discrimination against him, in the manner set forth in the amended remedy section of the decision.

(c) Withdraw and withhold recognition from and completely disestablish the F. M. Transport Employee

Committee in the event that it has been reestablished, or from any successor, as the representative of any of its employees for the purpose of dealing with the Respondent concerning wages, hours, or other terms and conditions of employment.

(d) Remove from its files any reference to the unlawful discharge of Robert Wiltse or the unlawful suspension of Edward Connolly, and notify them in writing that this has been done and that the discharge and suspension will not be used against them in any way.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its place of business in Portage, Indiana, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discourage membership or activities on behalf of United Steelworkers of America, AFL–CIO or Teamsters Local Union No. 124, a/w International Brotherhood of Teamsters, AFL–CIO, or any other labor organization, by discharging or suspending you or otherwise discriminating against you in your hire or tenure.

WE WILL NOT dominate, assist, support, or otherwise interfere with the formation or administration of F. M. Transport Employee Committee or any other labor organization of our employees.

WE WILL NOT tell employees to form a joint committee with management to resolve working condition problems while a union organizing campaign is in progress.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT question employees as to whether they have signed union cards.

WE WILL NOT question employees as to their reasons for having signed union cards.

WE WILL NOT tell employees the Company would obtain better insurance benefits if they abandon any prounion activity.

WE WILL NOT tell employees that we know which employees have signed union cards.

WE WILL NOT promise to improve conditions of employment during a union organizing campaign after questioning employees as to their economic demands.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Robert Wiltse immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL make whole Edward Connolly for any loss of pay he may have suffered as a result of the discrimination against him, plus interest.

WE WILL withdraw recognition from and will completely disestablish the F. M. Transport Employee Committee in the event that it has been reestablished, or any successor, as the representative of our employees concerning wages, hours, or any other terms and conditions of employment.

WE WILL notify Robert Wiltse that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

WE WILL notify Edward Connolly that we have removed from our files any reference to his suspension

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

and that the suspension will not be used against him in any way.

F. M. TRANSPORT, INC.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge. This decision will evaluate and pass judgment on evidence received during three hearings held in a consolidated proceeding over a 3-year period. There is no need to detail here the exact dates when charges were filed, when complaints were issued, or precisely what vacillating contentions of various parties were over the years. Those matters are precisely set out in my earlier decision, where I dismissed the entire proceeding because of lack of due process. The Board then ordered a decision based solely on the evidence received.[1]

The evidence was received on three separate occasions—October 27, 28, and 29, and June 29 and 30, 1986; June 29 and 30, 1988; and November 29 and 30, 1988.

On the entire record and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

F. M. Transport, Inc., a State of Indiana corporation with its principal office and place of business in Portage, Indiana, is engaged in the interstate transportation of freight and commodities. During a 12-month period preceding June 1985, in the course of its business it derived gross revenues in excess of $50,000 for the transportation of freight and commodities from the State of Indiana directly to points outside the State. During that same 12-month period, it purchased and received at its Indiana facility goods and materials valued in excess of $50,000 directly from points outside the State of Indiana. I find that the Respondent Employer is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

I find that United Steelworkers of America, AFL–CIO, and Teamsters Local Union No. 124, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

There were two attempts to organize the employees of the Respondent—one in 1985 by the Steelworkers and another in 1988 by Teamsters Local 124. The transcript record is replete with evidence that the Company, acting primarily through Fred Miletich, its president, made a continuous attempt to prevent any legitimate outside organization from representing its employees. As will appear below its agents committed continuous violations of Section 8(a)(1), against both the Steelworkers and the Teamsters.

But before getting to that part of the case, which falls in the usual issues presented in Board proceedings, there is an ambivalent and confusing element raised by the General Counsel that must be resolved at the outset to clarify the entire situation.

The hearing in 1986 extended over 3 full days. There was testimony about employees engaging in union activity in favor of the Steelworkers Union, but no signed authorization cards were offered in evidence, no statements were made about any appropriate bargaining unit, about majority, about demand for recognition—in short Section 8(a)(5) of the statute was not involved at all in the entire proceeding.

The record in its entirety shows very clearly that the employees involved did not really care for the Steelworkers, and equally as clear, that all union activity of any kind ceased by the end of 1985.

Three years later, in 1988, the employees started to join Local 124 of the Teamsters. During the 3 days of testimony taken in 1988, the General Counsel proved that the employees had engaged in that pro-Local 124 activity, and that the Respondent again illegally interfered with that protected activity by many violations of Section 8(a)(1) of the Act. One of the principal witnesses in support of the complaint added to the consolidated proceeding was Gary Proctor, the organizing officer of Local 124. He explained in clear detail how at several meetings of the employees he obtained from a majority of the employees in the appropriate unit—16 out of 22 or 24—regularly signed authorization cards and put them all in the hands of the General Counsel in support of their petition for an election filed by his union before the hearing took place.

At that same hearing in 1988, the General Counsel for the first time asserted that 3 years earlier, in 1985, the Respondent company had refused to bargain with the Steelworkers and had therefore violated Section 8(a)(5) of the Act. Before that time there had never been any charge, complaint, any contention whatever, either that the Steelworkers had requested recognition in 1985, that it had represented a majority, or that Section 8(a)(5) of the Act was to be considered at all.

There are many reasons for rejecting the General Counsel's request for an affirmative bargaining order today in favor of that union. I will speak only of one, which is sufficient.

These employees drive trucks to various steel mills and other steel products manufacturing companies. Their trucks are loaded by employees of those steel mills, all of whom are represented by the Steelworkers Union. There is testimony showing clearly that these employees signed cards, on their face showing membership in the Steelworkers, because they were told that if they could not show membership cards in that Union, the employees at the steel mills where they had to go every day would either refuse to load their trucks or delay the loading to the point where these drivers would lose part of their income.

The General Counsel offered 11 signed membership cards in favor of the Steelworkers in evidence. The employees who signed three of them testified at the 1988 hearing. Donald Puent said no one ever told him his truck would not be loaded at the steel mills if he did not sign that card. Mel Pergler gave the following testimony.

[1] 302 NLRB 241 (1991).

That union card I did not know at the time was a union card. Carl Kelley and Bob Tatros sat up there at Bob Tatros' office in Detroit, and told me straight to my face that all these steel haulers had to have these cards to get into the mills. If you didn't have these cards, you wouldn't get your truck unloaded. I didn't know it was a union card. If I'd known it was a union card, I wouldn't have signed it, because I don't want—I've had screw jobs from a union. I want nothing to do with the Union.

Everett Gudenschwager, another employee, quoted the solicitors as telling him in order to induce him to sign: ''they said we might have problems getting loaded in the mills, especially at U.S. Steel . . . if we weren't signed up.''

The remaining cards for the Steelworkers were placed into evidence through George Sullivan, the Steelworkers organizer. He said he saw all these employees sign these cards. His first comment about how he solicited the signatures was to deny having said anything to anyone about not being loaded at the steel mills. And then came what I consider a direct admission by the principal General Counsel's witness that these cards were all obtained by illegal threats and therefore do not support the General Counsel's assertion of majority status on the part of the Steelworkers.

Q. said you sent some kind of little blue card with it?

A. Yeah. If it says there was a card with that there probably was, yeah.

Q. And it says ''please keep this card with you, as you may be asked for it in the mills in the near future.'' What do you have reference to there, Mr. Sullivan?

A. Just exactly what it says.

Q. What do you mean ''You'll be asked for this in the mills in the near future?'' What were you talking about?

A. That's what I meant, I was talking you may be asked to show the card in the mill.

Q. To show the card. Who would ask them to show the card?

A. The loaders.

Q. The loaders. Who are the loaders?

A. The people that load the trucks in the mills.

Q. Are they employees in the steel mills?

A. They're Steelworker members.

Q. Steelworker Union members. Was there some kind of communications steelworker to union members to say—to ask drivers for these blue cards?

A. No.

Q. Were you thinking about instruction

A. Yes. Yes.

Q. Steelworkers to ask for those blue cards?

A. Yes, we were.

Q. Is that correct?

A. Yes.

Q. And did you later start communicating with steelworker loaders to ask for those cards?

A. I don't want to answer that question, but I guess—because it involves something else other than this case.

JUDGE RICCI: You know you have to speak up so you can be heard.

MR. SHEERIN: I don't even know what he said and he's—The Witness. I'm considering whether I should have to answer that question or not.

JUDGE RICCI: What?

THE WITNESS: I don't . . .

JUDGE RICCI: You're considering whether you should answer that question?

THE WITNESS: Yes, I don't want to answer that question.

I find that no merit in the complaint allegation, or in the General Counsel's contention, that the Respondent in any way violated Section 8(a)(5) of the statute with respect to the Steelworkers.

When, early in 1985, the Respondent learned that some employees were signing up with the Steelworkers, Miletich, its president, gathered all the employees and had them form a committee to deal with and resolve problems that existed in the conditions of employment. He told them there would be three employee members on that committee for the entire employee complement, and three management representatives speaking for the Company. In the extended transcript, there appear some conflicts in testimony as to exactly what Miletich told the employees as to his reason for doing that. But small, minor conflicts in testimony in no way changed the admitted facts which clearly prove the most outright unfair labor practices by the Respondent at that time.

When speaking to the assembled employees Miletich first said he had chosen three employees to be part of the committee. The employees then objected to the employer selecting their representatives. The president then permitted them to choose their own. An election took place then and there, and by a hand vote, three employees were chosen. At the same time Miletich told them he was chosing four management representatives to speak for the employer on the joint committee—Doris Gelb, Billy, N. Alhouse, and John C. Hall.

There then followed what was really a negotiating meeting of the joint committee, which went on for many hours. Among the things discussed were improvement in the dispatch procedures, the correct placement of a driver's name on the dispatch board after making a delivery, etc. Miletich presented a new set of work rules for approval, but employee members for the committee did not like that. As a result changes were made in the work rules, and finally, the Company had Alhouse, one of the Company's members of the committee, type them up. In the end the agreed-on new rules were accepted by the entire committee.

In the later meetings of the joint committee other workday problems were resolved—such as disciplinary action against an employee, whether a driver who had been involved in an accident should be given one or two disciplinary letters, and institution of an employee pension plan.

At the time of the last hearing in this proceeding, that committee had long ceased to function or exist at all. For the Respondent to have told the employees to form an internal joint committee to resolve working condition problems—at precisely the time when the employees were signing up for the Steelworkers, as management well knew—was a clear violation of both Section 8(a)(1) and (2) of the Act, and I so find.

In the numerous complaints filed, and in the General Counsel's brief to the Board when asking for a decision based on the evidence received, he lists at least seven separate unfair labor practices as having been committed by the Respondent on that single day when Miletich held his meeting with the employees to form the joint committee. Six years after the event, there seems little point in belaboring the clear unfair labor practice with such double talk. Miletich ''suggested'' the employees form a committee; was it a separate unfair labor practice to have ''convened'' the meeting that formed that committee? Does ''recognize'' and ''bargaining'' with such a committee amount to two separate unfair labor practices? Miletich designated which employees were being permitted to represent the Union on the committee. He also, again according to the General Counsel, ''named those individuals who were to be selected.''

In my considered judgment it is enough to find, as above, that the Respondent has violated the statute and must not hereafter repeat the same offense.

Although the confused and protracted record is not clear as to exactly when certain conversations took place, there is convincing evidence of Miletich having committed a number of other 8(a)(1) violations as the years went by, and as the employees signed up with one union after another. Miletich denied having spoken some of these antiunion statements. In the light of the total record and the admitted antiunion activities of the Respondent, I do not credit Miletich's denials.

Bill Rinker and Carl Kelley, two employees, spoke to Miletich in 1985, when the employees were signing up with the Steelworkers. From Rinker's testimony:

> Me and Carl Kelley went to Fred Miletich. Said Fred, the men don't feel that this union, the Steelworkers Union, is going to do anything for us, for the simple fact that you don't want them in here. You've made that plain and clear to us. So what we want to do is start our own union—the employees, here, and if we do, will you bargain with us? And he said yes he would.

Kelley testified that about the same time—in 1985, when he was soliciting signatures for the Steelworkers—Miletich called him at home, ''he asked me if I was getting guys to sign union cards and I said yeah. And he said I would get in trouble over it and, then, he swore at me a couple of times, I swore at him a couple of times, and then, I hung up on him.''

A few days later, again according to Rinker, Miletich asked him: ''He asked me if I—if we had all the signatures signed to get them to say that we didn't want them in our union anymore.'' ''I said, yes, we did.'' He said, ''well give me the paper. I'll give it to my lawyer and then forget about doing anything else.''

Rinker also quoted Miletich as saying shortly thereafter ''we decided because he was always saying that he would never negotiate with the United Steelworkers, he made that plain and clear.''

Months later Rinker again had conversation with Miletich in a local restaurant. ''We were talking about the Union and when we got up to leave Fred was all upset again about everything and he said, you know I could close this place and reopen it under a different name and get rid of all of the Union.''

As a witness Miletich denied having said he would never bargain with the Teamsters or the Steelworkers, or ever having said he would bargain with a company union. His testimony also contains the following:

> Q. You talked to Mr. Otis Summe?
>
> A. Yes.
>
> Q. Do you recall where it was you talked to Mr. Summe?
>
> A. I think it was on the premises, company premises.
>
> Q. Alright. And what did you say to Mr. Summe and what did he say to you?
>
> A. I asked Otis if he was involved, did he sign a union card. He said he did. Yeah. And I think I asked him why. He said, ''well, Fred, we're not going to get loaded in the mills.''
>
> . . . .
>
> Q. Now, can you recall when you talked to Don Morgan?
>
> A. Oh, it was about the same time.
>
> Q. And where did you talk to Mr. Morgan?
>
> A. On the premises.
>
> Q. What did you say to Mr. Morgan and what did he say to you?
>
> A. Well, I asked him about how it had come about to signing union cards. And he was told in Detroit that—somebody walked up to Me—to him, one of the drivers or somebody, and he just told him ''sign it, because you ain't got no choice, because you're going to belong to this union anyway, whether you like it or not.'' And he signed the union card.
>
> . . . .
>
> Q. Alright. Well, let me ask you this: Did you have any conversations with Mr. Gary Ross? Did you have any . . .
>
> A. Yes I did.
>
> Q. Alright. Can you recall where that conversation took place?
>
> A. It was on a Saturday, if I'm not wrong. I was down there and I called him. I wanted to talk to him in the office. And I asked him if he was also involved in it. He said yeah. He was. I said what is the—what was the problem? And he basically gave me the same thing like the other guys, better benefits. Like, he said that—protection and better benefits and more pay and all for that.
>
> Q. Did you respond to him at all?
>
> A. Yes, I did.
>
> Q. What did you say to him?
>
> A. I told him that since he come up here begging me for a job for three weeks, chasing me down—up and down from restaurant to the place and asking me to give him his job back, that I didn't feel that that was the right move for him, after I did certain things for Mr. Ross. And that was just about it.

With all this from Miletich himself there is really no question of credibility. I certainly credit the employees' testimony against his. And I find that by questioning employees whether and why they had signed union cards, and by threatening

employees with economic retaliation because of their union activity, the Respondent violated Section 8(a)(1) of the Act.

In the very heart of the Steelworkers' signing up activity, on May 28, 1985, Miletich held a meeting of all employees where a business agent of the Teamsters Union was present. This was a few days after he had called Kelley to him and told him ''he would get in trouble over it.'' Miletich asked the assembled employees what their ''problems'' were, why they were ''signing union cards.'' When someone said ''insurance'' was one of the problems, the company president answered ''he would look into it and if it wasn't no good, he would get us some better insurance.'' Miletich also told the men ''if the drivers wanted a union, then they could join 710.''

Miletich said at the hearing that the Teamsters agent's name was Oscar Machan. His attempted explanation of that man's presence at the meeting which Miletich himself called just about finishes off any credibility that can be given to his testimony in this entire proceeding. He said it was only an old friend who chanced to be passing by. He gave no straight answer as to whether or not he had invited the man to the meeting. At one point he even said he did know who had invited the man.

Miletich admitted the purpose of the meeting was to ''find out what the trouble was about this . . . the Union activity.'' He admitted asking the employees what their complaints were. He admitted telling them he would look into their complaints about insurance. He ended by saying he could not remember whether or not the Teamsters agent had talked at all.

I credit the testimony as to this entire event as given by the employees. I find that by questioning the employees as to why they had signed cards in favor of the Steelworkers Union, by letting them know he knew who had done so (a direct revelation of surveyance of union activity—*Clements Wire & Mfg. Co.*, 257 NLRB 206 (1981)), by inviting statements of complaint relative to conditions of employment and then promising to improve those conditions, etc., the Respondent violated Section 8(a)(1) of the Act.

Between 1986 and 1988 there does not appear to have been any union activity among these employees. The organizational campaign for the Steelworkers just died away. The hearing in the Board proceeding was put off by the General Counsel for no relevant reason, and things seem to have been quiet.

In 1988 the employees started signing cards to be represented by Teamsters Local 124. Their activity in this respect reached the point where Local 124 filed a petition for an election with the Board's Regional Office, supported by cards signed by majority of the employees in the appropriate unit. That petition was still awaiting action at the time of the last hearing in this case—November 30, 1988.

With this, Miletich resumed his past practice of trying to put a stop to such activity, regardless of the law which protects the right of employees to self-organization. Again, from Kelley's testimony. He said that 3 days after the Teamsters Local 124 meeting in January or February, where 14 employees were present, he was called to Miletich's office, where the president told him he had learned about the signing up activity. ''He told us that we would—he wanted me to go back to the guys like I did when the Steelworkers were trying to organize, talk them out of it, and he would give us a pension plan.''

When Kelley responded by saying he would not try to talk his fellow employees away from Local 124, Miletich went on: ''He said he was going to have—he'd call a meeting or something with the guys, and explain it to them what he decided on how much, to see what percentage, how much he'd give us more towards a pension. And what he would come up with was one percent.''

> Q. Did Mr. Miletich make any comments regarding what he might do if employees brought the union in?
> A. Oh yeah. Close the place down.
> Q. Is that what he said?
> A. Oh yeah.
> Q. In this same conversation?
> A. Probably said it a 100 times.

Still from Kelley's testimony:

> Q. Now, once again, regarding what he would do if the Union came in, what did Mr. Miletich say?
> A. He said he would close the place down or sell it.

Employee Switzer also testified about 1988. He started by saying he was hired in about 1985, when the Steelworkers campaign was going on. He said Miletich that day informed him about the Steelworkers and told him ''to stay out it.'' Switzer continued that after the employee meeting in which the Teamsters Local 124 cards were signed, he was called to Miletich's office. From his testimony:

> A. [H]e let me know that he was aware that there had been cards signed; said he didn't know who signed them, but he knew I was a ringleader. But that, he told me that he knew I didn't do it on my own, that Kelley had something to do with it. . . . Fred told me that he had three options. First option was to close the doors, sellout; the second option was to sell all of his trucks to drivers; or his third option was to give us a pension, pension plan. And that was one percent of his money and one percent of our money.

Switzer also quoted Miletich as follows:

> Fred had made the statement that he could fire somebody and it would be in his favor, because he would have an unfair labor practice case; and he felt that it was to his benefit to have an unfair labor practice case in court. There wouldn't be an election.

Miletich said that that meeting of employees did take place, on about February 27, and that the reason for calling it was because of certain problems he was having with the truckdrivers using the wrong routes while making deliveries. Miletich said he then asked the employees did they have ''any questions.'' With this, as he recalled, certain employees spoke of a problem they where having with their insurance benefits, and on the subject of retirement. Miletich then went on, as a witness, just talking generally in understandable language, about what was said on those two subjects. I get the impression he was saying the Company did not make any concessions to the employees' demands at that meeting.

Apart from all this Miletich said he knew nothing at that time about any activity in favor of the Teamsters. He categorically denied ever asking anyone whether they had signed union cards, telling them he knew who had signed, saying he would close the place down or sell his equipment, or speaking about the Union at all to the employees at that time.

Given the timing, Miletich's past activities while ignoring the statute in his clear desire to put a stop to any kind of protected union activity, and his vacillating and evasive way of answering questions during the hearing, I do not credit his conclusionary denials. Instead, I credit the employee witnesses as to the events of 1988.

Accordingly, I find that by threatening to close the business or to sell his equipment because of the union activity, by promising a pension plan as reason for the employees to stop signing union cards, and, again, by telling employees he knew who the prounion activitists were, the Respondent violated Section 8(a)(1) of the Act.

The original complaint alleges that a young man named Robert Wiltse was discharged in May 1985 as part of the Respondent's campaign to put a stop to the activities on behalf of the Steelworkers. Wiltse, then about 16 years old, was the stepson of Gary Ross, then a regular truckdriver with the Respondent. Ross testified that when he returned from a driving assignment on Saturday, April 26, Miletich called him to the office and asked had he signed a union card. When Ross answered yes, Miletich became angry and told him he was ''fired'' and ''that I could take my son with me.'' When Miletich said the employees were simply trying to make trouble for him, Ross denied it, and went on to explain that the employees were concerned with job security, insurance, and other benefits. With this Miletich told the driver to come to the employee meeting he was calling for the following Monday morning.

Ross went to that meeting on April 28 (where the Teamsters Local 710 business agent was brought by Miletich), and, after the meeting, his son informed him that he, Wiltse, had been discharged.

Miletich admitted (see above) having called Ross into his office that Saturday morning to ask whether he was involved in the union activity, and what the problem was. He also admitted telling Ross at that moment that because he had helped Ross in the past by hiring him, it was not right for the man now to have joined a union movement. The one phrase from the witness which makes this particular complaint allegation clearest is, ''I told him that since he didn't like my way of doing things, the way I'm paying him and everything, that he could take—he could leave and take the boy with him. That's what I told him. That's correct.'' As it developed Ross did not voluntarily leave the Company. He was discharged a few weeks later.

Given the timing of Wiltse's discharge, clear violations of Section 8(a)(1) by Miletich when talking to Ross only 2 days earlier, and Miletich's antiunion activities running through this entire record, I credit Ross against him as to the incident. There is therefore presented a prima facie case of a legal discharge of the boy.

Against this, I find Miletich's attempted explanation of the young man's discharge, without a word of advance warning, unacceptable. It is a perfect example of the mixed up, confused, double talk kind of testimony he gave again and again.

Q. Robert Wiltse was discharged by the company. Is that correct?

A. He was laid off.

Q. Was he told at the time that he was going—that he was being laid off?

A. I didn't tell him, no. I did not.

Q. Do you know what he was told at that time?

A. Yeah.

Q. How do you know that?

A. Because Mr. Whittin—I told him to lay him off.

Q. You told Mr. Whittin to lay-off Robert Wiltse?

A. Yes.

Q. Okay. Why did you make the decision to lay-off Robert Wiltse?

A. The decision was to made to lay-off Robert Wiltse. Robert Wiltse is a young boy, he's very loud, he does not get along with other employees, and so forth.

Q. Okay. Was this lay-off intended to be a suspension of Wiltse?

A. It was a lay-off, I said.

Q. Was it intended to be permanent?

A. Not is a sense, yes or no. I don't know. I can't answer that question now.

Miletich also said at the hearing that Wiltse was not a reliable employee. ''He would not call in take a day or two without calling in. . . . He couldn't get along with his—the guy he worked with, he couldn't get along.''

There is no evidence that Wiltse was ever either criticized for his performance or given any warning that he might loose his job. The discharge came without advance notice. Wiltse testified, and he was not contradicted, that when fired he was not even given a reason. A 16-year old boy could very well just leave when discharged without asking questions.

I find that the Respondent discharged Wiltse in retaliation against the employees generally to curb their union activity, and thereby violated Section 8(a)(3) of the Act.

A final issue raised in the original complaint is that the Respondent criticized an employee and punished him with a 2-week suspension from work because of his prounion activity. The man's name is Edward Connolly, one of the regular truckdrivers. Again, considering all the facts relevant to this particular question, I find that Miletich, president of the Company who made the decision to suspend the man and in fact carried it through, really continued it as part of his overall campaign to put a stop to the Steelworkers organizational campaign, and thereby violated Section 8(a)(3) of the Act.

The suspension came on October 15, 1986, only 12 days before the first hearing in this proceeding was scheduled to take place on October 27. Connolly had been working for this Company since 1984, and there is no indication of any prior criticism of his work performance before this suspension.

Miletich was well aware of the man's union activity, and there is clear evidence of his resultant animosity against him for that reason. Back in May, just 2 days after Connolly had signed a card in favor of the Steelworkers, Miletich called him to the office, asked had he signed the union card, and why? When the man said ''yes,'' the president came back with—as found above—a clear violation of Section 8(a)(1). ''I am going to fire you and everybody else that signed those

union cards.'' Later, after the trucker's suspension and when Connolly had filed NLRB charges against the Company, Miletich said to employee Ringer, while sitting in a cafe, ''and E. G. Connolly filed more charges against me . . . the only way I can get him off my back is to kill him.'' Thus, given the absence of any evidence of prior criticism of the man's work, the clear evidence of animosity against Connolly, and the timing of the suspension, the record certainly shows a clear prima facia case of an unfair labor practice.

Against this, Miletich's attempt as a witness to justify the questioned suspension as proper punishment for deliberate misconduct on the job, is totally unconvincing.

On Sunday evening, October 13, Miletich called Connolly at home and asked him to leave the same evening to make a delivery to Detroit. Connolly did that. The delivery he was to make was scheduled to be brought to the receiver's dock at 7:30 p.m., Monday evening. When Connolly got to Detroit late Sunday night, he checked into a motel. The next day he made the delivery as scheduled. That same night he returned to the motel and the next morning called the office to tell the dispatcher he was free to accept a load coming back, a normal procedure.

Miletich's testimony is that Connolly lied about what he was doing in Detroit, that he did not carry out orders, that he did not make the delivery when he was supposed to, etc. It is an inconsistent, ever changing story he gave, contrary to clearly admitted facts. Miletich started by saying Connolly made a mistake in going to the motel Sunday night instead of making the delivery when he first reached Detroit. In the next breath the witness admitted the appointed time for making that delivery was Monday evening, and that Connolly did make the delivery at that time. Immediately after saying this, from the witness came the following:

> Q. Did he make the delivery when he was supposed to make it? Answer it anyway you want.
>
> A. THE WITNESS: ''No he did not.
>
> Q. Now, did he make the delivery at the appointment time for the delivery. Did he not?
>
> A. Yeah. Assumed, schedule yeah, that's what it was. Yeah, he did.

Recalled later as a witness again, Miletich again changed his story:

> A. ''Mr. Connolly was suspended for two weeks because he violated three rules in two days, and that's how simple it is. That's why he got the suspension for two weeks. I stated before I really should have fired him because he disobeyed a direct order.
>
> Q. What was the direct order?
>
> A. The direct order is—was to leave for Lantz [the customer] and deliver their load. That was a direct order. He disobeyed it, thats like refusing a dispatch.

The truth is Connolly did exactly what his order called for. The following testimony by Connolly is uncontradicted and absolutely credible:

> Q. And when you arrived at Lantz at 2 o'clock, what happened?
>
> A. Okay. I parked on the side like I always do, and proceeded in the front door of Lantz. The security guard came out the front door and I said, I'm—can I get this load off tonight? He looked at my bills and said, ''You're scheduled for 7:30 Monday night.'' I said, yes, sir, but I thought maybe I could get it off. He says, ''No way you're getting this off.'' And I said okay.
>
> Q. And then what do you do?
>
> A. I proceeded back to the motel.

In conclusion I find that the 2-week layoff of Connolly in October 1985 was a violation of Section 8(a)(3) by the Respondent.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth above, carried on in connection with its operations in Portage, Indiana, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes, obstruction of commerce, and the free flow of commerce.

V. THE REMEDY

The Respondent must be ordered to cease and desist from again committing the various unfair labor practices found. It must also be ordered to reinstate employee Wiltse, who was illegally discharged, and to make whole employee Connolly for the 2 weeks of pay he lost when illegally suspended. In the light of the extensive and repetitive unfair labor practices committed by the Respondent, it must also be ordered to cease and desist from in any other manner violating the statute.

CONCLUSIONS OF LAW

1. By discharging employee Wiltse and by suspending employee Connolly, the Respondent has violated and is violating Section 8(a)(3) of the Act.

2. By the foregoing conduct, and by telling employees to form a joint committee with management to resolve working conditions of employment, by discussing and resolving working conditions problems directly with employees while a regular union organization campaign is in progress, by questioning employees as to whether or not they had signed union cards, by questioning employees as to the reasons they had signed union cards, by telling employees the Company would obtain better insurance benefits if they abandoned their prounion activity, by telling employees the employer knows which employees had signed union cards, and by promising to improve conditions of employment during an organizational campaign after questioning employees as to their reasons for such activity, the Respondent has violated and is violating Section 8(a)(1) of the Act.

3. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]